לֵימָא רַבִּי אַבָּא דְּאָמַר כְּרַבָּנַן,

Having established the parameters of the dispute, the Gemara suggests: **Let us say** that the statement of **Rabbi Abba, who said** that the original verdict stands, **is in accordance with** the opinion of **the Rabbis.** When the owner of the field forgot where his path was located, the surrounding land was owned by four different owners, and therefore at that time the verdict was that he had no ability to successfully claim his path. The Rabbis apparently assume that that verdict stands, and therefore the field owner is considered to have lost any rights to the path. Consequently, even if the surrounding pieces of land are later purchased by a single person, the owner of the field cannot make a claim for his path.

וְרַבִּי יִרְמְיָה דְּאָמַר כְּאַדְמוֹן?

The Gemara continues: **And** the statement of **Rabbi Yirmeya, who said** that the original verdict is repealed, **is in accordance with** the opinion of **Admon.** Admon apparently assumes that although the original verdict was that the field owner has no ability to successfully claim his path, nevertheless, that does not mean he loses his rights to the path. Rather, once the situation changes and the surrounding pieces of land are purchased by a single person, the original uncertainty is revived to allow him to make a claim for at least the shortest path to his field.

אָמַר לָךְ רַבִּי אַבָּא: אֲנָא דַּאֲמָרִי אֲפִילּוּ כְּאַדְמוֹן. עַד כָּאן לָא קָאָמַר אַדְמוֹן הָתָם – אֶלָּא מִשּׁוּם דְּאָמַר לֵיהּ: מִמַּה נַּפְשָׁךְ

The Gemara rejects the comparison: **Rabbi Abba** could have **said to you: When I stated** my ruling, it was **even in accordance with** the opinion of **Admon. Admon states** his ruling **only there,** in the case of the lost path, **because** the field owner **said to** the owner of the surrounding land: **Whichever way you** look at it,

Perek **IV**
Daf **38** Amud **a**

דְּרָכִי חַד גַּבָּךְ הוּא, אֲבָל הָכָא – מִי אִיכָּא לְמֵימַר הָכִי?

my one path is with you[N] in one of your pieces of land. Since his claim is based on facts that are clear and certain, his claim is successful. **However, here,** in the dispute over the inheritance, **is** the son of uncertain descent **able to state** a claim like **this?** Although the son of uncertain descent claims that ultimately, whatever the nature of his relationship with the deceased is, he should have the right to inherit, nevertheless, since it is not actually known what that relationship is, his claim in reality is merely a composite of uncertain claims.

וְרַבִּי יִרְמְיָה אָמַר לָךְ: אֲנָא דַּאֲמָרִי אֲפִילּוּ לְרַבָּנַן, עַד כָּאן לָא קָאָמְרִי רַבָּנַן הָתָם אֶלָּא מִשּׁוּם דְּאָמַר לֵיהּ: אִי שָׁתְקַתְּ – שָׁתְקַתְּ, וְאִי לָא – מַהֲדַרְנָא שְׁטָרָא לְמָרַיְיהוּ, וְלָא מָצֵית לְאִשְׁתַּעוּיֵי דִּינָא בַּהֲדַיְיהוּ. אֲבָל הָכָא – מִי אִיכָּא לְמֵימַר הָכִי?

And Rabbi Yirmeya could have **said to you: I stated** my ruling **even in accordance with** the opinion of **the Rabbis,** since perhaps **the Rabbis state** their ruling **only there,** in the case of the lost path, **because** the owner of the surrounding land **said to** the field owner: **If you** do not press your claim and **are silent,** then **be silent** and I will sell you the path at a reasonable price; **but if not,** then **I will return the bills** of purchase of the pieces of land **to their** previous **owners and** then **you will not be able to** successfully **engage in a legal dispute with them.** He is successful with this claim because it is within his power to return the fields and thereby recreate the original circumstances in which the owner of the field would forfeit the path. **However, here, are** the sons of the *yavam* **able to state** a claim like **this?** The original circumstance, in which the inheritance of the deceased had still not been divided, cannot be recreated. Therefore, a claim based on that circumstance will be unsuccessful.

NOTES

My one path is with you – דְּרָכִי חַד גַּבָּךְ הִיא: The commentary here is in accordance with the explanation of Rashi that the distinction between the two cases is whether or not the claim is definite or uncertain. Other commentaries suggest a different interpretation: The distinction lies in whether it is possible to offer a claim based on the current situation. In the case of the path, the field owner's claim is tendered irrespective of any dealings he had with the previous owners of the surrounding pieces of land; it is made against the current owner of the surrounding land based on his ownership of it. However, in the dispute over the inheritance, the claim relates to the original situation, before the inheritance was divided; a situation that no longer exists (Rid; Rabbi Avraham min HaHar).

HALAKHA

One of uncertain descent and the *yavam* with regard to the possessions of the grandfather – סָפֵק וְיָבָם בִּנְכְסֵי סָבָא: In a case where the *yavam* and one of uncertain descent, who is either the son of the deceased or the son of the *yavam*, came to divide up the possessions of the grandfather, i.e., the father of the *yavam*, and the son of uncertain descent claims that he is the son of the deceased and therefore a portion of the possessions should be awarded to him, his claim is not accepted and all of the property is awarded to the *yavam* (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 5:5; *Shulḥan Arukh*, *Even HaEzer* 163:6).

One of uncertain descent and the sons of the *yavam* with regard to the possessions of the grandfather – סָפֵק וּבְנֵי יָבָם בִּנְכְסֵי סָבָא: In a case in which the sons of the *yavam* and one of uncertain descent, who is either the son of the deceased or the son of the *yavam*, came to divide up the possessions of the grandfather, i.e., the father of the *yavam*, the portion that each party concedes to the other side is awarded to that side, and then the remaining possessions are divided up between them, half given to the son of uncertain descent and the other half divided between those who are definitely sons of the *yavam* (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 5:5; *Shulḥan Arukh*, *Even HaEzer* 163:7).

LANGUAGE

One-sixth [*danka*] – דַּנְקָא: *Danka* is a Persian monetary unit that appears in Middle Persian sources as dāng. This unit was equal to one-sixth of a dinar. The term was then borrowed to refer to one-sixth of anything, as in this passage.

סָפֵק וְיָבָם שֶׁבָּאוּ לַחֲלוֹק בִּנְכְסֵי סָבָא, סָפֵק אָמַר: הַאי גַּבְרָא בַּר מִיתְנָא הוּא, וּפַלְגָא דִּידִי הוּא. יָבָם אָמַר: אַתְּ בְּרַאי דִּידִי אַתְּ, וְלֵית לָךְ וְלָא מִידֵי,

The Gemara brings another case, that of one of **uncertain** descent, who is either the son of the deceased or the son of the *yavam*, **and** the ***yavam* who came to divide up** the **possessions of the grandfather,**[H] i.e., the father of the *yavam* and the deceased, and each one made a claim to the inheritance. The son of **uncertain** descent **said: That man,** referring to himself, **is the son of the deceased, and** therefore **half** of the possessions **are mine** because the inheritance should be split between the two sons, i.e., the deceased and the *yavam*, and since I am the sole heir of the deceased, I should receive his portion. **The *yavam* said** to him: **You are my son, and** therefore **you have absolutely no** rights to the possessions; rather, I should receive all the inheritance. One half is mine because I am the grandfather's son, and the other half, which would have gone to my deceased brother, I should receive by virtue of the fact that I consummated the levirate marriage with his widow.

הֲוֵי יָבָם וַדַּאי, וְסָפֵק סָפֵק – וְאֵין סָפֵק מוֹצִיא מִידֵי וַדַּאי.

The Gemara rules on this case: This is a case in which **the *yavam* has a definite** claim[N] because he is the grandfather's son, **and** the son of **uncertain** descent has only **an uncertain** claim, and the *halakha* is that one with **an uncertain claim cannot extract** property **from** one who has **a definite** claim to it. Therefore, the *yavam* receives all the inheritance.

סָפֵק וּבְנֵי יָבָם שֶׁבָּאוּ לַחֲלוֹק בִּנְכְסֵי סָבָא, סָפֵק אָמַר: הַהוּא גַּבְרָא בַּר מִיתְנָא הוּא, וּפַלְגָא דִּידִי הוּא. וּבְנֵי יָבָם אָמְרוּ: אָחוּנָא אַתְּ, וּמְנָתָא אִית לָךְ בַּהֲדָן.

The Gemara raises yet another case, that of one of **uncertain** descent, who is either the son of the deceased or the son of the *yavam*, **and the sons of the *yavam* who came to divide up** the **possessions of the grandfather,**[H] and each one made a claim to the inheritance. The son of **uncertain** descent **said: That man,** referring to himself, **is the son of the deceased, and** therefore **half** of the possessions **are mine** because the inheritance should be split between the two sons, i.e., the deceased and the *yavam*, and since I am the lone heir of the deceased I should receive his portion. **And the sons of the *yavam* said: You are our brother, and** therefore **you** should **receive** only **a portion together with us.**

פַּלְגָא דְּקָמוֹדִי לְהוּ – שָׁקְלִי, תִּילְתָא דְּקָא מוֹדוּ לֵיהּ – שָׁקַל. פַּשׁ לְהוּ דַּנְקָא, הֲוֵי מָמוֹן הַמּוּטָּל בְּסָפֵק – וְחוֹלְקִין.

The Gemara rules on this case: **The half** of the grandfather's possessions **that** the son of uncertain descent **concedes** belongs **to them,** the sons of the *yavam*, **they take** for themselves. By claiming to be the son of the brother who died first, he forfeits any rights to the other brother's portion. **The third** of the grandfather's possessions **that** the sons of the *yavam* **concede** belong **to him,** the son of uncertain descent, **he takes** for himself. By claiming he is their brother, they admit that he should at least receive an equal portion to them, which would mean one-third if they are three. This **leaves them** with **one-sixth** [***danka***][L] of the possessions that **is property of uncertain ownership, and** so **they** should **divide** it **up** between them.

NOTES

The *yavam* has a definite claim – הֲוֵי יָבָם וַדַּאי: Rashi and Rivan explain that his claim is deemed to be definite because he will definitely receive at least some portion of the inheritance. Therefore, he is considered to have control over the property, and the son of uncertain descent, whose claim is uncertain, is not able to extract any of that property from him. *Tosafot* question Rashi's opinion: Why should the fact that he definitely has a right to a portion of the inheritance grant him control over all of it? *Tosafot* therefore reject Rashi's explanation and suggest that the *yavam* is considered to have a definite claim because he indisputably has the status of an heir of the deceased; the only question is how much of the inheritance he should receive. However, the son of uncertain descent may not be an heir at all. Therefore, since the very basis of his right to inherit is uncertain, it is inappropriate that he should receive anything in the presence of one who is certainly an heir. The *Arukh LaNer* defends Rashi's explanation. He suggests that with regard to inheritance, the fact that one has a definite right to part of an inheritance proves that ultimately he has the basis for a claim to all the inheritance. Therefore, his claim is considered to be definite.

סָבָא וְיָבָם בִּנְכְסֵי סָפֵק, אוֹ סָבָא וְסָפֵק בִּנְכְסֵי יָבָם –

The Gemara presents two additional cases. One is a case where a son of uncertain descent, who is either the son of the deceased or the son of the *yavam*, died, and **the grandfather and the *yavam*** come to divide up the **possessions of the** son of **uncertain** descent. In the absence of any children, a father inherits from his son. The grandfather claims that the son of uncertain descent was actually the son of the deceased, and since the deceased has already died, the grandfather should be next in line to inherit from him. The *yavam* claims that the son of uncertain descent was his own son, and therefore he should inherit from him. **Or,** the second case is one in which the *yavam* died and **the grandfather and the** son of **uncertain** descent[N] come to divide up the **possessions of the *yavam*.** The son of uncertain descent claims to be the lone son of the *yavam* and therefore he should inherit, whereas the grandfather claims that the son of uncertain descent was the son of the deceased and that the *yavam* died childless, and therefore the grandfather, who is the father of the *yavam*, should inherit from him.

הֲוֵי מָמוֹן הַמּוּטָּל בְּסָפֵק, וְחוֹלְקִין.

The Gemara rules in these cases: This **is** a case of **property of uncertain ownership, and** so **they** should **divide up** the possessions between them.[H]

מתני׳ שׁוֹמֶרֶת יָבָם שֶׁנָּפְלוּ לָהּ נְכָסִים, מוֹדִים בֵּית שַׁמַּאי וּבֵית הִלֵּל שֶׁמּוֹכֶרֶת וְנוֹתֶנֶת וְקַיָּים.

MISHNA With regard to **a widow waiting for her *yavam***[N] to either consummate a levirate marriage or perform *ḥalitza* with her, i.e., a *yevama*, **to whom property was bequeathed:**[H] **Beit Shammai and Beit Hillel** both **agree that she may sell or give** away that property *ab initio*, **and** that if she did, the transfer **is valid.** Since she has only a levirate bond with the *yavam*, she retains total control of the property. This is in contrast to a betrothed woman, concerning whom Beit Hillel rule that she may not sell such property because her betrothed also has rights to it (*Ketubot* 78a).

מֵתָה – מַה יֵּעָשֶׂה בִּכְתוּבָּתָהּ וּבִנְכָסִים הַנִּכְנָסִים וְיוֹצְאִין עִמָּהּ? בֵּית שַׁמַּאי אוֹמְרִים: יַחֲלוֹקוּ יוֹרְשֵׁי הַבַּעַל עִם יוֹרְשֵׁי הָאָב, וּבֵית הִלֵּל אוֹמְרִים: נְכָסִים בְּחֶזְקָתָן: כְּתוּבָּה בְּחֶזְקַת יוֹרְשֵׁי הַבַּעַל, נְכָסִים הַנִּכְנָסִים וְיוֹצְאִין עִמָּהּ בְּחֶזְקַת יוֹרְשֵׁי הָאָב.

If she **died, what should be done with** the money assured to her in **her marriage contract** by her deceased husband **and with** her **property that enters and leaves** the marriage **with her,** in which a husband only ever has a usufructuary interest?[H] **Beit Shammai say: The husband's heirs,** i.e., the *yavam*, who stands to inherit from the husband when he consummates the levirate marriage, **should divide up** the property **together with** her **father's heirs,** i.e., the woman's family. **And Beit Hillel say:** The **property** retains **its** previous ownership **status.**[N] Therefore, money assured to her in her **marriage contract** remains **in the possession of the husband's heirs.** Since it was to be paid from the husband's own property, the money is retained by his estate and passes to his heirs. And her **property that enters and leaves** the marriage **with her** remains **in the possession of the father's heirs.** Since those properties belonged to her, upon her death they are inherited by her father or his heirs.

HALAKHA

The grandfather and the *yavam*, the grandfather and the son of uncertain descent – סָבָא וְיָבָם, סָבָא וְסָפֵק: If a son of uncertain descent, who is either the son of the deceased or the son of the *yavam*, died, and the grandfather claims that the son of uncertain descent was actually the son of the deceased, and so the grandfather should inherit from him, and the *yavam* claims that the son of uncertain descent was his own son, and so he should inherit from him, then they should divide up the possessions equally between them. The same *halakha* would apply if the *yavam* died and the grandfather and the son of uncertain descent both claimed the possessions of the *yavam* (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 5:5; *Shulḥan Arukh*, *Even HaEzer* 163:8).

A widow waiting for her *yavam* to whom property was bequeathed – שׁוֹמֶרֶת יָבָם שֶׁנָּפְלוּ לָהּ נְכָסִים: If a widow waiting for her *yavam* is bequeathed property after she already happened before the *yavam* for levirate marriage, she is in full possession of that property; she may sell or give away the property *ab initio*. The Ran rules that this is the *halakha* even if the *yavam* had performed levirate betrothal with her (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 3:10 and *Sefer Nashim*, *Hilkhot Ishut* 22:10; *Shulḥan Arukh*, *Even HaEzer* 160:5).

Inheritance of a widow waiting for her *yavam* – יְרוּשַׁת שׁוֹמֶרֶת יָבָם: If a widow waiting for her *yavam* dies, her heirs inherit the property that enters and leaves the marriage with her, and the husband's heirs inherit the money assured to her in the marriage contract. With regard to her guaranteed property, some say it is divided up equally between her heirs and her husband's heirs (Rashi; Rambam). Others say that the guaranteed property is awarded to the husband's heirs (Rabbeinu Tam; Rosh). Even according to the first opinion, if the husband's heirs had already taken control of the property, it is not to be removed from their possession (Ran). Some rule that in places where the custom is always to perform *ḥalitza* and never to allow levirate marriage, the husband's heirs gain no entitlement to the property (Rema, citing Maharik; Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:10; *Shulḥan Arukh*, *Even HaEzer* 160:7).

NOTES

The grandfather and the son of uncertain descent – סָבָא וְסָפֵק: The grandfather in this case is unquestionably the father of the *yavam*; it is only the son whose identity is uncertain. If so, ostensibly, this is an additional case in which one party, in this case the grandfather, has a definite claim to the inheritance, whereas the other party, in this case the son of uncertain descent, has only an uncertain claim. Why, then, does the Gemara not adduce the *halakha* it cited above that in such cases the inheritance is awarded to the party with the definite claim? The early commentaries explain that whenever one is survived by a son, the other relatives are not considered to have the status of heirs at all. Therefore, although the grandfather's identity is unquestioned, his status as an heir is uncertain. Since both parties have equally uncertain claims, the possessions are divided between them (see Rid and Ramban).

A widow waiting for her *yavam* – שׁוֹמֶרֶת יָבָם: The Hebrew term for this woman is a *shomeret yavam*. The root *sh-m-r* usually denotes the concept of guarding. However, Rashi here and elsewhere notes that in this context the word denotes waiting, in this case for her *yavam*. Rashi cites proof for this from other instances in the Gemara (*Ketubot* 62b) and the Bible (Genesis 37:11; see *Tosefot Yom Tov*).

The property retains its previous ownership status – נְכָסִים בְּחֶזְקָתָן: According to this version of the mishna's text, which is the version cited by the *ge'onim*, it would appear that Beit Hillel first present a principle: The property retains its previous ownership status, and then proceed to demonstrate its application to the marriage contract and to the property that enters and leaves the marriage with her. This version does not mention explicitly what should be done with guaranteed property, i.e., property that the wife brings with her into the marriage that is explicitly recorded in the marriage contract and whose value the husband guarantees will be returned to her in the event of payment of the marriage contract. However, since such property is written as part of the marriage contract, it is assumed that it is treated in the same way as the marriage contract itself. This is how Rabbeinu Tam, the Rashba, and many other early commentaries rule.

Other early commentaries have a different version of the mishna's text that states: The property retains its previous ownership status and the marriage contract remains in the possession of the husband's heirs. The addition of the conjunctive: And, before: The marriage contract, indicates that the *halakha* cited concerning the marriage contract is not an elaboration of a previous principle but a new case. Accordingly, the opening clause: The property retains its previous ownership status, should not be taken as a principle but as an independent case. Therefore, according to this version the mishna actually presents three different cases: First it states what should be done with: The property, which is a reference to her guaranteed property; then it states what should be done with her marriage contract, which refers to both its principal value and any additional sums the husband may have promised; and finally it states what should be done with her property that enters and leaves the marriage with her. Although this version does explicitly make reference to her guaranteed property, it does not state what precisely should be done with it. However, the Gemara elsewhere (see *Bava Batra* 158a) elaborates on this point and rules that the property should be split between the parties. This is how Rashi on *Ketubot* 80a explains the mishna, and the Rambam rules accordingly.

כְּנָסָה – הֲרֵי הִיא בְּאִשְׁתּוֹ לְכָל דָּבָר, וּבִלְבַד שֶׁתְּהֵא כְּתוּבָּה עַל נִכְסֵי בַּעֲלָה הָרִאשׁוֹן.

If the *yavam* **consummated the levirate marriage with her, then** her legal status is **that of his wife**[H] **in every sense,** and therefore the *yavam* has the same rights to her property as in a regular marriage. **And** the **only** exception to this is **that** her **marriage contract will** still **be** payable **from the property of her first husband**[H] and not from the property of the *yavam*.

גמ׳ מַאי שָׁנְא רִישָׁא דְּלָא פְּלִיגִי, וּמַאי שָׁנְא סֵיפָא דְּפְלִיגִי?

GEMARA The Gemara asks: **What is different** about **the first clause,** concerning a *yevama* who is still alive, **that** Beit Shammai **do not disagree** with Beit Hillel that the woman has full possession of the property since there is only a levirate bond but no marriage, **and what is different** about **the latter clause that** Beit Shammai **disagree** with Beit Hillel and rule that the *yavam* does take a share of the property, which would imply that the levirate bond alone is sufficient to afford the *yavam* rights over her property?[N]

אֲמַר עוּלָּא: רִישָׁא – דְּנָפְלָה כְּשֶׁהִיא אֵרוּסָה, וְסֵיפָא – דְּנָפְלָה כְּשֶׁהִיא נְשׂוּאָה.

Ulla said: The two clauses concern different cases: **The first clause** concerns a case **where she happened** before her *yavam* for levirate marriage at a time **when she was a betrothed woman**[N] and only then did she come into the possession of property. Since when she was betrothed her husband did not have any rights to the property, neither does the *yavam*. **And the latter clause** concerns a case **where she happened** before her *yavam* at a time **when she was a married woman.** In such a case, were her husband still alive, he would have full rights to the property; therefore, so does the *yavam*.

וְקָסָבַר עוּלָּא: זִיקַת אֵרוּסָה – עוֹשָׂה סָפֵק אֵרוּסָה,

The Gemara explains: **And Ulla holds** that a levirate **bond** formed **with a betrothed woman affords** her a status equivalent to **a woman** about whom there is an **uncertainty** whether she is **betrothed,**[N]

HALAKHA

If the *yavam* consummated the levirate marriage with her then her legal status is that of his wife – כְּנָסָה הֲרֵי הִיא כְּאִשְׁתּוֹ: If a *yavam* consummated a levirate marriage with his *yevama*, then her legal status is that of his wife in every sense and he is able to separate from her only by means of a bill of divorce; afterward, if he wishes, he may remarry her (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:10; *Shulḥan Arukh*, *Even HaEzer* 168:1).

Her marriage contract is payable from the property of her first husband – כְּתוּבָּה עַל נִכְסֵי בַּעֲלָה הָרִאשׁוֹן: The marriage contract that a *yavam* gives to his *yevama* has to be paid only from the possessions he inherits from her first husband (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:10 and *Hilkhot Yibbum* 1:1; *Shulḥan Arukh*, *Even HaEzer* 166:4, 168:3).

NOTES

Interpretations of the mishna – פֵּירוּשֵׁי הַמִּשְׁנָה: The Gemara presents four different interpretations of the mishna in the name of Ulla, Rabba, Abaye, and Rava. The commentaries discuss the principal differences between the various opinions, as well as the question of which opinion was accepted as the *halakha*. In a responsum, Rav Hai Gaon claims that all of the opinions here are only explications of Beit Shammai's opinion. Accordingly, the entire talmudic discussion is irrelevant to the *halakha* since the *halakha* is in accordance with the opinion of Beit Hillel recorded in the mishna (see Ramban).

Where she happened before her *yavam* when she was a betrothed woman – דְּנָפְלָה כְּשֶׁהִיא אֵרוּסָה: This version of the Gemara text, which is also the version cited by Rashi, states: Where she happened. Accordingly, the mishna concerns a case where the property fell to her only after her husband had already died and she was awaiting levirate marriage. The distinction between the clauses lies in the strength of the levirate bond, which is dependent upon her status when her husband died. The *ge'onim*, however, had an alternate version that states: Where they fell to her, with the word they being a reference to the property. According to this version, the property fell to her when she was still married to her previous husband, and the distinction between the cases is due to whether her husband gained ownership of that property. If she was already married at the time, then when the property fell to her, her husband instantly gained rights to it, and those rights will pass over to the *yavam*. However, if she was still only betrothed to her husband at the time, the property would remain fully in her possession (see Rashba and Ritva).

Affords her a status equivalent to a woman about whom there is an uncertainty whether she is betrothed – עוֹשָׂה סָפֵק אֵרוּסָה: Rashi questions why it is necessary to afford her such a status; in truth, the *yavam* has no rights to property that is bequeathed to his *yevama* while she is still awaiting levirate marriage. Accordingly, the Gemara could have simply stated: A levirate bond formed with a betrothed woman is nothing. Rashi explains that the Gemara avoided describing her levirate bond in this way because doing so could have given the incorrect impression that there is no levirate bond at all and that she does not even require *ḥalitza*. By describing the bond in the way it did, the Gemara clarifies that although the bond indeed exists, nevertheless it does not afford the *yavam* with any rights.

The Rashba takes issue with Rashi's assertion that the *yavam* has no rights to her property. See his commentary for a resolution of Rashi's opinion He notes that in the mishna in *Ketubot* 78a, Beit Hillel rule that a betrothed woman may not sell property that was bequeathed to her *ab initio* because her husband also has rights to it. As such, it is clear why the Gemara could not have stated: The levirate bond is nothing, because were she to have already come into the possession of the property while betrothed to her previous husband, the levirate bond formed with the *yavam* would also prevent her from selling that property *ab initio*.

זִיקַת נְשׂוּאָה עוֹשָׂה סָפֵק נְשׂוּאָה.

and a levirate **bond** formed **with a married woman affords** her a status equivalent to that of **a woman** for whom there is an **uncertainty** whether she is **married,** i.e., when her husband dies, the same level of relationship that existed with the first husband is created with the *yavam*. However, since the new relationship exists only by virtue of a levirate bond, it exists to a lower degree, and so the rights afforded to the *yavam* are more limited than those the first husband would have enjoyed; the rights granted to the *yavam* are equivalent to the rights of husband in a case where there is uncertainty whether that level of relationship exists at all.

זִיקַת אֵרוּסָה עוֹשָׂה סָפֵק אֲרוּסָה, דְּאִי סָלְקָא דַּעְתָּךְ דַּאֲרוּסָה – מוֹדִים בֵּית הִלֵּל שֶׁמּוֹכֶרֶת וְנוֹתֶנֶת וְקַיָּים?!

The Gemara proceeds to demonstrate this: It must be that a levirate **bond** formed **with a betrothed woman affords** her a status equivalent to that of **a woman** for whom there is an **uncertainty** whether she is **betrothed, because if it enters your mind** to suggest that her status is equivalent to that of **a definitely betrothed woman, would Beit Hillel concede that she may sell or give** away her property *ab initio*, **and that** if she does the transfer **is valid?**

וְהָתְנַן: נָפְלוּ לָהּ נְכָסִים מִשֶּׁנִּתְאָרְסָה, בֵּית שַׁמַּאי אוֹמְרִים: תִּמְכּוֹר, וּבֵית הִלֵּל אוֹמְרִים: לֹא תִּמְכּוֹר. אֵלּוּ וְאֵלּוּ מוֹדִים שֶׁאִם מָכְרָה וְנָתְנָה – קַיָּים. אֶלָּא שָׁמַע מִינָּהּ: זִיקַת אֲרוּסָה – עוֹשָׂה סָפֵק אֲרוּסָה.

But didn't we learn in a mishna (*Ketubot* 78a): If **property was bequeathed to** a woman **after she was betrothed,**[H] **Beit Shammai say: She may sell** that property, **and Beit Hillel say: She may not sell** that property. However, **both agree that if she sold** it **or gave** it **away,** the transfer **is valid.** The mishna clearly states that according to Beit Hillel, a woman who is definitely betrothed may not sell the property *ab initio*. **Rather, conclude from here,** from the fact that here Beit Hillel permit the *yevama* to sell her property *ab initio*, that a levirate **bond** formed **with a betrothed woman affords** her a status equivalent to that of **a woman** for whom there is an **uncertainty** whether she is **betrothed.**

זִיקַת נְשׂוּאָה עוֹשָׂה סָפֵק נְשׂוּאָה, דְּאִי סָלְקָא דַּעְתָּךְ דַּאֲי נְשׂוּאָה בֵּית שַׁמַּאי אוֹמְרִים יַחֲלוֹקוּ יוֹרְשֵׁי הַבַּעַל עִם יוֹרְשֵׁי הָאָב?!

Similarly, it must be that a levirate **bond** formed **with a married woman affords** her a status equivalent to that of **a woman** for whom there is an **uncertainty** whether she is **married, because if it enters your mind** to suggest that her status is equivalent to that of **a definitely married woman,** would **Beit Shammai say** that **the husband's heirs should divide up** the property **together with the father's heirs?**

וְהָתְנַן: נָפְלוּ לָהּ נְכָסִים מִשֶּׁנִּישֵּׂאת – אֵלּוּ וְאֵלּוּ מוֹדִים שֶׁאִם מָכְרָה וְנָתְנָה שֶׁבַּעַל מוֹצִיא מִיַּד הַלָּקוֹחוֹת. אֶלָּא שָׁמַע מִינָּהּ: זִיקַת נְשׂוּאָה עוֹשָׂה סָפֵק נְשׂוּאָה.

But didn't we learn in a mishna (*Ketubot* 78a): If **property was bequeathed to** a woman **after she was married,**[H] **both** Beit Hillel and Beit Shammai **agree that if she sold** the property **or gave** it **away,** then **the husband repossesses** it **from the purchasers. Rather, conclude from here,** from the fact that here Beit Shammai assume the rights of the *yavam* are limited, that a levirate **bond** formed **with a married woman affords** her a status equivalent to **a woman** for whom there is an **uncertainty** whether she is **married.**

אֲמַר לֵיהּ רַבָּה: אַדְּמַפְלְגִי בְּגוּפָהּ וּלְאַחַר מִיתָה, לִפְלְגוּ בְּחַיֶּיהָ וּלְפֵירוֹת!

Rabba challenges Ulla's understanding of the mishna: **Rabba said to him:** If your explanation is correct, then in the latter clause, **instead of disagreeing** with regard to who has the rights to the property **itself,** which necessitates considering the case **after** her **death, let** Beit Hillel and Beit Shammai **disagree with regard to** the more immediate case **when she is** still **alive and** dispute who has the rights **to** the use and **produce**[N] of the property.

HALAKHA

A betrothed woman's property – נִכְסֵי אֲרוּסָה: A betrothed woman may not sell property belonging to her *ab initio*, but if she does so, the sale is valid (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:8; *Shulḥan Arukh*, *Even HaEzer* 90:11, 160:5).

A married woman's property – נִכְסֵי נְשׂוּאָה: If a married woman sold her property of which the husband has a usufructuary interest, even if that property fell to her as an inheritance prior to her betrothal, then her husband continues to have rights to the use of that property as long as they are married. If she dies, he may also repossess the property from the buyer and need not compensate the buyer monetarily. Some (*Tur*; Rosh) say that he may repossess the property even while she is still alive (Rambam *Sefer Nashim*, *Hilkhot Ishut* 22:7; *Shulḥan Arukh*, *Even HaEzer* 90:9).

NOTES

Let them disagree with regard to the case when she is alive and dispute the rights to the produce – לִפְלְגוּ בְּחַיֶּיהָ וּלְפֵירוֹת: The early commentaries already note that this is certainly not the halakhic conclusion, as it is undisputed that the *halakha* is that before he consummates the levirate marriage the *yavam* has no rights to the use and produce of the property of the *yevama* (see Rashba). Rather, this statement of Rabba is only in accordance with the opinion of Ulla (see *Yosef Lekaḥ*).

אֶלָּא אֲמַר רַבָּה: אִידִי וְאִידִי דְּנָפְלָה כְּשֶׁהִיא נְשׂוּאָה, וְזִיקַת נְשׂוּאָה – עוֹשָׂה סָפֵק נְשׂוּאָה. רֵישָׁא דְּאִיהִי קַיְימָא – הֲוָה לָהּ אִיהִי וַדַּאי וְאִינְהוּ סָפֵק וְאֵין סָפֵק מוֹצִיא מִידֵי וַדַּאי.

Rather, Rabba said a different resolution to the apparent inconsistency in Beit Shammai's rulings: Both **this** first clause **and that** latter clause of the mishna concern a case in **which she happened** before her *yavam* for levirate marriage **once she was** already **a married woman, and** a levirate **bond** formed **with a married woman affords** her a status equivalent to that of **a woman** about whom there is an **uncertainty** whether she is **married.** The distinction between the two clauses is as follows: In the **first clause, where she is alive, she has a certain** claim to the property, **while they,** i.e., the *yavam*, are considered to have only **an uncertain claim** to the property, as she has the status of a woman for whom there is an uncertainty whether she is married. **And** since one who has **an uncertain claim cannot extract** property **from** one who has **a definite** claim to it,[N] she therefore retains full possession of the property.

סֵיפָא דְּמֵתָה – הַלָּלוּ בָּאִין לִירַשׁ וְהַלָּלוּ בָּאִין לִירַשׁ, וְיֶחֱלוֹקוּ.

In **the latter clause,** however, **where she died,** neither party has a definite claim; rather, **these** heirs of the father **come to inherit, and those** heirs of the husband **come to inherit, and** therefore **they should divide up** the property.

אֵיתִיבֵיהּ אַבַּיֵי: וּלְבֵית שַׁמַּאי אֵין סָפֵק מוֹצִיא מִידֵי וַדַּאי?! וְהָתְנַן: נָפַל הַבַּיִת עָלָיו וְעַל אָבִיו, עָלָיו וְעַל מוֹרִישָׁיו, וְהָיוּ עָלָיו כְּתוּבַּת אִשָּׁה וּבַעַל חוֹב,

Abaye raised an objection to Rabba's opinion: **But** is it true that **according to Beit Shammai,** one with **an uncertain claim cannot extract** property **from** one who has **a definite** claim to it? **Didn't we learn** in a mishna (*Bava Batra* 157a): In a case where **a house collapsed upon** a person **and upon his father,**[H] or **upon him and upon those** from **whom he stood to inherit, and there were** outstanding debts **against** that person from his **wife's marriage contract and** to **a creditor,** but he had no money with which to pay those debts, and it is not known who died first, the following situation arises: If the father died first, then before the son died he had already inherited the father's property and therefore the son's creditors gained a lien over that property and have the rights to collect their debts from that property even after the son's death.

יוֹרְשֵׁי הָאָב אוֹמְרִים: הַבֵּן מֵת רִאשׁוֹן וְאַחַר כָּךְ מֵת הָאָב. וּבַעַל חוֹב אוֹמֵר: הָאָב מֵת רִאשׁוֹן וְאַחַר כָּךְ מֵת הַבֵּן,

Accordingly, the father's heirs and the creditor offer opposing claims: **The father's heirs say: The son died first and** only **afterward the father died.** Therefore, the creditor never gained any rights to collect from the property. **And the creditor says: The father died first and** only **afterward the son died.** Therefore, the father's property was liened to the son's debts, and the creditor has a right to collect.

בֵּית שַׁמַּאי אוֹמְרִים: יֶחֱלוֹקוּ, וּבֵית הִלֵּל אוֹמְרִים: נְכָסִים בְּחֶזְקָתָן.

The mishna continues: **Beit Shammai say: They should divide up** the property between them. **And Beit Hillel say:** The **property** retains **its** previous ownership **status,** which in this case means that since the last known possessor was the father, so the father's heirs gain full rights to it.

וְהָא הָכָא, יוֹרְשֵׁי הָאָב – וַדַּאי, וּבַעַל חוֹב – סָפֵק, וְקָאָתֵי סָפֵק וּמוֹצִיא מִידֵי וַדַּאי!

Abaye explains his proof: **Isn't** it the case **here** that **the father's heirs** have a **definite** claim **and the creditor** has only **an uncertain** claim? Therefore, since Beit Shammai rule that the property should be divided up, it is apparent that they hold that one with **an uncertain claim can extract** property **from** one who has **a definite** claim to it.

NOTES

One who has an uncertain claim cannot extract property from one who has a definite claim to it – אֵין סָפֵק מוֹצִיא מִידֵי וַדַּאי: The Gemara discusses this principle in tractate *Pesaḥim* (9a) and suggests based on various sources that an uncertainty can override even a certainty. One example given is that of one who leaned over a pit, and it is known that at some point a corpse lay at the bottom of the pit. If the corpse was still there when he leaned over the pit, then he would be rendered ritually impure. However, there is uncertainty whether the corpse is in fact still there, since an animal may have dragged it away. The existence of that uncertainty is sufficient to undermine the certainty that there was a corpse there, and accordingly the person who leaned over the pit may be deemed ritually pure (see the Gemara there).

Why, then, does the Gemara here state unequivocally that an uncertainty cannot override a certainty? It would seem that with regard to monetary claims the *halakha* is different, due to the principle that the burden of proof rests upon the claimant. The later authorities explain that in the case in the Gemara here, although the woman presents a definite claim, since her status is uncertain that impacts her claim and prevents her from being able to lay claim to the property.

HALAKHA

A house collapsed upon a person and upon his father – נָפַל הַבַּיִת עָלָיו וְעַל אָבִיו: If a house collapsed upon a person and his father or anyone else from whom he stood to inherit, and it was unknown whether that person or his father died first, and there were outstanding debts against that person from his wife's marriage contract and to a creditor, this gives rise to the following situation: The father's heirs can claim that the son died first and since he had no properties of his own any debts against him became void, and the wife and the creditors can claim that the father died first, and so the son inherited from him before dying, and they therefore have a right to collect their debts from that money. The *halakha* in this case is that the property remains in the possession of the father's heirs, and the burden of proof rests upon the wife and the creditors. This ruling is in accordance with the opinion of Beit Hillel (Rambam *Sefer Mishpatim*, *Hilkhot Naḥalot* 5:8; *Shulḥan Arukh*, *Ḥoshen Mishpat* 280:12).

קָסָבְרִי בֵּית שַׁמַּאי: שְׁטָר הָעוֹמֵד לִגְבּוֹת כְּגָבוּי דָּמֵי.

Rabba rejects the proof: Beit Shammai's ruling in this case cannot be adduced as a proof because **Beit Shammai hold:** A debt recorded in **a bill** of debt **that is awaiting collection**[N] **is as though it was already collected** to the extent that the creditor is considered to be in possession of the debt. Therefore, the creditor is considered to be in possession of the property to the same extent as the father's heirs; consequently, the property is divided between them.

וּמְנָא תֵּימְרָא – דְּתָנַן: מֵתוּ בַּעֲלֵיהֶן עַד שֶׁלֹּא שָׁתוּ, בֵּית שַׁמַּאי אוֹמְרִים: נוֹטְלוֹת כְּתוּבָּתָן וְאֵינָן שׁוֹתוֹת, וּבֵית הִלֵּל אוֹמְרִים: אוֹ שׁוֹתוֹת אוֹ לֹא נוֹטְלוֹת כְּתוּבָּתָן.

And from where do you say that Beit Shammai hold this opinion? **As we learned** in a mishna (*Sota* 24a): A married woman who secluded herself with another man after her husband had warned her not to do so is suspected of having committed adultery. To establish her guilt or innocence she is brought to the Temple, where she drinks the bitter waters. With regard to such women, if **their husbands died before they drank**[H] the bitter waters, **Beit Shammai say: They collect** the money assured to them in **their marriage contracts and do not drink** the waters. **And Beit Hillel say: Either they drink,** and if they survive they collect their marriage contracts, **or** they do not drink and **they cannot collect their marriage contracts,** and all the husband's property passes to his heirs.

אוֹ שׁוֹתוֹת?! "וְהֵבִיא הָאִישׁ אֶת אִשְׁתּוֹ" אָמַר רַחֲמָנָא, וְלֵיכָּא! אֶלָּא: מִתּוֹךְ שֶׁלֹּא שׁוֹתוֹת לֹא נוֹטְלוֹת כְּתוּבָּתָן.

The Gemara clarifies the statement of Beit Hillel: Did Beit Hillel really mean: **Either they drink,** which implies they may actually choose to drink? But doesn't **the Merciful One state: "And the man shall bring his wife"** (Numbers 5:15), which indicates that the ritual of drinking the bitter waters applies only when the husband is still alive, **and** in this case **there is no** husband to do so; consequently, she should not be able to drink. **Rather,** Beit Hillel's intent is as follows: The only means by which a suspected adulteress is able to collect her marriage contract is by drinking the bitter waters and proving her innocence. Therefore, where this is not possible due to the death of the husband, **since** the wives **do not drink, they cannot collect their marriage contracts.**

וְהָא הָכָא, דְּסָפֵק הוּא, סָפֵק זְנָאי סָפֵק לָא זְנָאי, וְקָאָתֵי סָפֵק וּמוֹצִיא מִידֵי וַדַּאי! אֶלָּא שְׁמַע מִינָּה: שְׁטָר הָעוֹמֵד לִגְבּוֹת כְּגָבוּי דָּמֵי.

Rabba explains his proof from this mishna: **Isn't** it the case **here that** the wife's claim to her marriage contract **is uncertain** because there is **uncertainty whether she was unfaithful or whether she was not unfaithful, and** so it would appear that one with **an uncertain** claim **is coming and undermining** the **definite** claim of the husband's heirs? This is untenable, as even were one to hold that someone with an uncertain claim can extract property from someone who has a definite claim to it, that would only allow for the money to be divided between the two sides, whereas in this case Beit Shammai rule that the creditor collects the entire debt. **Rather, conclude from** that mishna that Beit Shammai hold that a debt recorded in **a bill** of debt **that is awaiting collection is** considered **as though it were already collected** to the extent that the one who is owed the money is considered to be in possession of the debt. It is due to this reason that she is empowered to be able to collect her marriage contract.

וְאַבַּיֵי, לוֹתְבֵיהּ מֵהָא! דִּלְמָא כְּתוּבַּת אִשָּׁה שָׁאנֵי, מִשּׁוּם חִינָּא.

The Gemara asks: **And** why did **Abaye** object to Rabba's opinion based on the mishna in tractate *Bava Batra*? **Let him object to** Rabba's opinion **based on this**[N] mishna in tractate *Sota* since based on Abaye's assumption that a bill of debt is not considered as though it were already collected, this mishna perforce demonstrates that Beit Shammai hold that one with an uncertain claim can extract property from one who has a definite claim to it. The Gemara answers: Abaye did not object based on this mishna because he reasoned that **perhaps a woman's marriage contract is different** from a regular bill of debt in that the Sages uniquely reinforced a woman's hold over the debt in her marriage contract **due to** the increased **desirability**[N] that this would bring her when trying to remarry. This would ensure that she would bring some money with her into a new marriage.

NOTES

A bill of debt that is awaiting collection, etc. – שְׁטָר הָעוֹמֵד לִגְבּוֹת וכו': Rav Hai Gaon raises a difficulty with Rabba's claim. Even if one concedes that in general a bill of debt that is awaiting collection is considered as though it was already collected, it is unreasonable to apply that principle in a case such as this, where the son did not have any property. Therefore, he claims that the Gemara's question was not resolved by the Gemara.

And Abaye, let him object to Rabba's opinion based on this – וְאַבַּיֵי לוֹתְבֵיהּ מֵהָא: Rashi explains that the Gemara's difficulty is with the fact that Abaye raised his objection from a mishna in tractate *Bava Batra*, a tractate in the order of *Nezikin*, when he could have raised his objection from a mishna in tractate *Sota*, which, like tractate *Yevamot*, is in the order of *Nashim*. *Tosafot Yeshanim* explain differently: Since the Gemara had not yet demonstrated that according to Beit Shammai a document awaiting collection is considered as though it is already collected, the mishna in tractate *Sota* presents a more immediate difficulty: Why indeed should those women receive their marriage contracts, since isn't it the *halakha* that one with an uncertain claim cannot extract property from one who has a definite claim to it?

Tosafot note further that in any case the mishna proves difficult for Abaye's opinion because it states that she receives the entire marriage contract, whereas according to Abaye, Beit Shammai should hold that she should receive only half (see *Tosefot HaRosh*). *Tosafot* suggest that since the woman is able to present a definite claim that she was not unfaithful, whereas her relatives' claims are only uncertain, she is therefore in a stronger position and so she is awarded her entire marriage contract. Ramban offers an additional answer: Since Beit Shammai hold that one with an uncertain claim can extract property from one who has a definite claim to it, it would appear that they regard an uncertain claim to be like a definite claim. Therefore, it is possible that one follows the principle that unless proven otherwise, one presumes the original status remains unchanged and therefore one should presume the woman was not unfaithful. Consequently, she should receive the entire value of her marriage contract. It is also possible that Abaye holds that the mishna in tractate *Sota* does not actually mean that she collects the entire marriage contract but only that she collects from it; she would never actually receive more than half.

Due to desirability – מִשּׁוּם חִינָּא: *Tosafot* on *Ketubot* 84a cite the explanation of Rabbeinu Ḥananel that reinforcing the marriage contract makes women more attractive to men since it ensures that a woman will bring some money with her into a new marriage. Rashi on *Ketubot* 84a and *Arakhin* 22a suggests a different explanation: Reinforcing the marriage contract is not designed to make women more desirable to men but to make the institution of marriage more desirable to women. The existence of a strong marriage contract reduces the likelihood that the husband will divorce the wife without careful consideration, as the divorce would create a financial burden upon him.

This explanation would appear to assume that a woman is reluctant to marry and the Sages therefore needed to take steps to encourage her. However, this would seem to contradict another statement of the Sages that a woman wishes to marry as she cannot bear to be alone (*Kiddushin* 41a), and based on this concept the Sages ruled that a marriage contract is collected from the husband's lowest-quality possessions in order to make the institution of marriage more appealing to men. *Tosafot* raise this difficulty to Rashi's opinion but claim that it does not pose a full refutation because one cannot draw comparisons between different rabbinic decrees. The reason for this is that often, in one instance the Sages will favor one party while in another instance they may favor the other party.

HALAKHA

Their husbands died before they drank – מֵתוּ בַּעֲלֵיהֶן עַד שֶׁלֹּא שָׁתוּ: If a woman secluded herself with another man after her husband had warned her not to do so and her husband then died, she may not drink the bitter waters and does not receive her marriage contract. This is in accordance with the opinion of Beit Hillel, according to the conclusion of the Gemara (Rambam *Sefer Nashim*, *Hilkhot Sota* 2:7).

וְלוֹתְבֵיהּ כְּתוּבָּה דְּמַתְנִיתִין!

The Gemara asks again concerning Abaye's decision to object to Rabba's opinion based on the mishna in *Bava Batra*: **Let him object to** Rabba's opinion **based on** the case of the **marriage contract in the mishna** here (38a). In its latter clause, the mishna states that if a widow waiting for her *yavam* dies, Beit Shammai rule that her marriage contract and other property are divided between her father's heirs and the *yavam*. In that case, the *yavam* has certain possession of that property, and the father's heirs come with an uncertain claim to collect the value of the marriage contract. The fact that Beit Shammai rule that they should divide up the value of the marriage contract between them demonstrates that they hold that one with an uncertain claim can extract property from one who has a definite claim to it.

לָא פְּלִיגִי. וְלָא? וְהָא קָתָנֵי: מֵתָה, מַה יַּעֲשֶׂה בִּכְתוּבָּתָהּ וּבַנְּכָסִים הַנִּכְנָסִים וְיוֹצְאִין עִמָּהּ? בֵּית שַׁמַּאי אוֹמְרִים: יַחֲלוֹקוּ יוֹרְשֵׁי הַבַּעַל עִם יוֹרְשֵׁי הָאָב, וּבֵית הִלֵּל אוֹמְרִים: נְכָסִים בְּחֶזְקָתָן!

The Gemara responds: In truth, Beit Shammai **do not disagree** on that point. The Gemara challenges this claim: Do they **not** disagree? **But it is** explicitly **taught** in the mishna that they disagree in that case: If the widow waiting for her *yavam* **died, what should be done with** the money assured to her in **her marriage contract, and with** her **property that enters and leaves** the marriage **with her? Beit Shammai say: The husband's heirs should divide up** the property **together with the father's heirs. And Beit Hillel say:** The **property** retains **its** previous ownership **status.**

הָכִי קָאָמַר: מֵתָה, מַה יַּעֲשֶׂה בִּכְתוּבָּתָהּ, וּשְׁבָקָהּ. נְכָסִים הַנִּכְנָסִים וְהַיּוֹצְאִים עִמָּהּ, בֵּית שַׁמַּאי אוֹמְרִים: יַחֲלוֹקוּ יוֹרְשֵׁי הַבַּעַל עִם יוֹרְשֵׁי הָאָב וּבֵית הִלֵּל אוֹמְרִים נְכָסִים בְּחֶזְקָתָן.

The Gemara answers: **This is what** that mishna **is saying:** If she **died, what should be done with** the money assured to her in **her marriage contract? And** the *tanna* then **left** this question unanswered, and addressed an additional case: What should be done with her **property that enters and leaves** the marriage **with her? Beit Shammai say: The husband's heirs should divide up** the property **together with the father's heirs. And Beit Hillel say:** The **property** retains **its** previous ownership **status.**

אֲמַר רַב אַשִׁי: מַתְנִיתִין נַמִּי דַּיְקָא, דְּקָתָנֵי: יַחֲלוֹקוּ יוֹרְשֵׁי הַבַּעַל עִם יוֹרְשֵׁי הָאָב, וְלֹא קָתָנֵי יוֹרְשֵׁי הָאָב עִם יוֹרְשֵׁי הַבַּעַל – שְׁמַע מִינָּהּ.

Rav Ashi said: The language of **the mishna is also precise** according to this interpretation, **as it teaches:** Beit Shammai say that **the husband's heirs should divide up** the property **together with the father's heirs,** which implies that the father's heirs had de facto possession of the property and the husband's heirs then came and divided that property with them. This is true with regard to her property that enters and leaves the marriage with her. **And** the mishna **does not teach** using the reverse formulation: Beit Shammai say that **the father's heirs should divide up** the property **together with the husband's heirs,** which would imply that the husband's heirs had *de facto* possession of the property; this is true with regard to the payment of the marriage contract. **Conclude from here** that Beit Shammai did not rule what should be done with the payment of the marriage contract, as the Gemara claimed.

אַבַּיֵי אָמַר: רֵישָׁא דְּנָפְלוּ לָהּ כְּשֶׁהִיא שׁוֹמֶרֶת יָבָם, סֵיפָא דְּנָפְלוּ לָהּ כְּשֶׁהִיא תַּחְתָּיו דְּבַעַל.

The Gemara presents a third resolution to the apparent inconsistency in Beit Shammai's rulings in the mishna: **Abaye said: The first clause** concerns a case in **which** property **was bequeathed to her when she was** still **a widow waiting for her *yavam*** to perform levirate marriage or *ḥalitza*, and **the latter clause** concerns a case in **which** property **was bequeathed to her when she was** still **under,** i.e., married to, **her** first **husband,**[N] before he died.

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The latter clause concerns a case in which property was bequeathed to her when she was under her husband – סֵיפָא דְּנָפְלוּ לָהּ כְּשֶׁהִיא תַּחְתָּיו דְּבַעַל: Most commentaries claim that the present version of the Gemara's text is the correct version: When she was under her husband. Rav Hai Gaon had another version that states: When she was under him. This allows for Rav Hai Gaon's unique explanation that the reference is not to being married to her husband, but to being under the *yavam*, i.e., being bound to him through a levirate bond. Accordingly, the dispute between Beit Hillel and Beit Shammai is, in Abaye's opinion, whether the *yavam* is entitled to at least a portion of the property that enters and leaves the marriage with the woman, of which the husband has a usufructuary interest. Do the rights of the *yavam* fully parallel those of her husband, in which case he would have rights, or does he have weaker rights, in which case he should not be entitled to them at all?